IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3605 OF 2003

Ravindra Vasudeo Godbole & ors. Petitioners

versus

Avinash Vishnu Khandekar
and others Respondents

Mr.R.M.Pethe i/by R.G.Ketkar for petitioners.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 13th January 2006

PC :

1. Heard Shri Pethe for the petitioners who are original defendant nos.1 to 6 in Civil Suit No.5 of 2001 pending on the file of District Judge, Pune.

2. It appears that an application is made for dismissal of the suit by these defendants on the ground that the Principal Relief is barred by res-judicata. Even otherwise, the suit is liable to be dismissed against these defendants because plaint does not disclose any cause of action against them. It is their case that they are

Directors of the 7th defendant company. However, as far as they are concerned, they cannot be impleaded merely because they are Directors as such unless something more is attributed to them.

3. The application of the petitioners- original defendants 1 to 6 has been opposed by the original plaintiff and he filed is reply thereto on 11th March 2002. It is contended in the reply that each of the defendants impleaded to the suit have infringed copy right of the original plaintiffs in the works of Late V.S.Khandekar.

4. The learned Judge by the impugned order dismissed the application and while dismissing the same he has observed that there is no substance in the contentions that no cause of action is disclosed as far as petitioners are concerned and that the suit is not barred by res judicata.

5. In my view, the application itself was premature. The whole issue is whether there is a cause of action for the suit insofar as petitioners are concerned and if there be one, whether the same survives or whether adjudication in that respect is barred because of the

principles of res-judicata. Such contentions cannot be decided unless and until the suit itself is tried and heard by the Trial Court. It is during the course of the trial that such issues can be appropriately dealt with. Therefore, interest of justice would be served, if despite rejection of the application preferred by the petitioners, the contentions raised therein are allowed to be raised at a subsequent stage.

6. In the light of the above, the petition stands dismissed. However, dismissal of the petition as well as of the application by the Trial Court would not prevent the petitioners from raising appropriate contentions including the one raised in the impugned application and if they are so raised, the same shall be considered by the Trial Court uninfluenced by the observations made at an interlocutory stage. Petition disposed of.

(S.C.DHARMADHIKARI, J.)